

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

UNITED STATES OF AMERICA	§	
Plaintiff,	§	
	§	
v.	§	Civil No. 1:19-cv-112
	§	
\$34,990.00 IN UNITED STATES	§	
CURRENCY,	§	
Defendant.	§	

VERIFIED COMPLAINT FOR FORFEITURE IN REM

In accordance with Fed. R. Civ. P. Supplemental Rule G(2), the United States of America, Plaintiff, brings this complaint and alleges as follows:

Nature of the Action

1. This is an action to forfeit property to the United States pursuant to 21 U.S.C. § 881(a)(6).

Defendant In Rem

2. The defendant property is \$34,990.00 in United States Currency (Defendant Property). Deputies with the Orange County Sheriff's Office seized the Defendant Property on October 10, 2018. The Defendant Property is currently in the custody of the United States Marshals Service.

Jurisdiction and Venue

3. The Court has subject matter jurisdiction over an action commenced by the United States pursuant to 28 U.S.C. § 1345, and over an action for forfeiture pursuant to

28 U.S.C. § 1355(a).

4. The Court has in rem jurisdiction over the Defendant Property pursuant to 28 U.S.C. § 1355(b)(1)(A) because acts or omissions giving rise to the forfeiture occurred in this district.

5. Venue is proper in this district pursuant to 28 U.S.C. §1355(b)(1)(A) because acts or omissions giving rise to the forfeiture occurred in this district.

Basis for Forfeiture

6. The Defendant Property is subject to forfeiture pursuant to 21 U.S.C. § 881(a)(6) because it constitutes (i) money, negotiable instruments, securities and other things of value furnished and intended to be furnished in exchange for a controlled substance in violation of the Controlled Substances Act; (ii) proceeds traceable to such an exchange; or (iii) money, negotiable instruments, and securities used and intended to be used to facilitate a violation of the Controlled Substances Act.

Facts

7. On October 10, 2018, Orange County Sheriff's Office (OCSO) Investigator Allen Burleson and Sergeant Tracy Sorge conducted a traffic stop on a 2005 Kenworth Truck Tractor on IH-10 at Mile Marker 872 in Orange County, Orange, Texas. The driver and lone occupant was identified as Jose Bello-Amigo, hereinafter referred to as Bello. Florida Department of Motor Vehicles indicated the vehicle is registered to E & S Transportation, Inc., with the owner/lessor being Rodolfo Hernandez, hereinafter referred to as Hernandez.

Upon questioning Bello, Sergeant Sorge and Investigator Burleson, through training and experience, noticed Bello's body demeanor displayed elevated amounts of physical nervousness along with inconsistent travel itinerary. Sergeant Sorge requested and received consent to search the vehicle from Bello.

Upon request, Bello presented the vehicle cab-card. On receipt, the Florida apportioned cab-card indicated E & S Transportation, Inc. had a single power unit or a fleet of one truck, the only truck in the company and the one that was currently detained. The single unit company confirmed that a cross-country trip was not within industry standards. While examining the cab-card travel pack, it was noted that four trailer registrations were present. This indicated that a single truck company would not be able to function within the industry if transporting legitimate commodities. Sergeant Sorge requested Bello's e-log book. It was discovered Bello was not utilizing his e-log as required and later surrendered a hand written, very incomplete, log. The logs were not to industry standards and were incomplete with drive dates left blank.

Upon searching of the vehicle, Sergeant Sorge noticed a blue garment bag atop the sleeper's driver's side cabinet. Inside the bag, Sergeant Sorge located a firm squared object, which was discovered to be a large block of U.S. Currency wrapped in newspaper and within a plastic bag. The garment bag contained \$34,990.00 U.S. currency bound by rubber bands. Also found in the vehicle, a self-made pack of rubber bands was located in the glove box and duct tape in the sleeper. It should be noted the rubber bands were similar to bands that secured the currency into bundles.

During a Post-Miranda interview, Bello claimed ownership of the money and stated it was savings from his employment as a truck driver over the last 11 years. Bello stated he had approximately \$27,000 saved prior to his imprisonment in 2014, and continued to save once he re-established employment upon his release from federal prison. A/RAC Vincent asked Bello why he did not have his money in a bank and Bello responded that he was, "Old school Hispanic" and did not "trust banks." A/RAC Vincent pointed to a bankcard in Bello's wallet and asked if this was Bello's bank account and Bello confirmed it was his, and claimed it currently had approximately \$1,000 in the account. Additionally, Bello claimed he kept his savings in a cabinet at his residence, while in prison and did not tell his wife about the money. Bello also admitted signing a court document during his prosecution in Florida, in which he denied having any money in order for the court to appoint him counsel on his federal charges. When asked why he was untruthful on the affidavit in court, Bello stated that he did not think he could justify having it because of his drug case. Bello also provided a telephone number for the manager of E & S Transportation, Inc., whom he identified as Sylvia Nunez, the daughter of Rodolfo Hernandez. A query of available DEA databases associated the phone number with E & S Transportation, Inc., linked to a 400 lb. marijuana seizure in an E & S Transportation commercial vehicle on 06/19/2016.

An NCIC query revealed Bello was arrested on 7/17/14 for Conspiracy to possess with intent to distribute five or more kilograms of cocaine, which involved Bello participating in the negotiations for the purchase of 12 kilograms of cocaine. Bello was

convicted and sentenced on 12/19/14 to 24 months in the Bureau of Prisons and placed on 36 months supervised release on or about 12/22/19.

A certified narcotic K-9 conducted a free air search of the vehicle and bag containing the currency, and the K-9 gave a positive alert to both.

Bello states he is employed by Hernandez under E & S Transportation, Inc., however a query of the Florida Workforce Commission (FWC) indicated Bello has no reportable income.

Because of Bello's past history, along with his story about the currency, which the Officers found to lack credibility, and the positive alert by the drug K-9, the currency was seized as likely proceeds of illegal drug activity.

Potential Claimants

8. The only known potential claimants to the Defendant Property are:

Jose Bello-Amigo
Represented by Charles Zavala Esq.
2950 North West Loop, Suite 500
Houston, Texas 77092; and

E&S Transportation, Inc. / Rodolfo Hernandez
6922 North Hale Avenue
Tampa, Florida 33614-3854.

Claim for Relief

9. The United States respectfully requests that the Court forfeit the Defendant Property to the United States, award costs and disbursements in this action to the United States, and order any other relief that the Court deems appropriate.

Respectfully submitted,

JOSEPH D. BROWN
UNITED STATES ATTORNEY

/s/

MICHAEL W. LOCKHART
Assistant United States Attorney
Eastern District of Texas
Texas Bar No. 12472200
350 Magnolia Avenue, Suite 150
Beaumont, Texas 77701-2237
(409) 839-2538
(409) 839-2643 (fax)
michael.lockhart@usdoj.gov

VERIFICATION PURSUANT TO 28 U.S.C. § 1746

I, Michael W. Lockhart, hereby state that:

1. I am an Assistant United States Attorney for the Eastern District of Texas.
2. I have read this Complaint, and the information contained herein is true and correct to the best of my knowledge.
3. The information contained in this Complaint comes from the official files and records of the United States and information received from law enforcement officers.

I state and verify under penalty of perjury that the foregoing is true and correct.

/s/ Michael W. Lockhart
MICHEAL W. LOCKHART
Assistant United States Attorney

Dated: March 1, 2019.

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v.	§	No. 1:19-cv-112
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ORDER FOR WARRANT OF ARREST IN REM

TO: The Clerk of the Court, United States District Court for the Eastern District of Texas

WHEREAS, on March 1, 2019, the United States of America filed a verified complaint for civil forfeiture in the United States District Court for the Eastern District of Texas against the defendant property, alleging that the property is subject to seizure and civil forfeiture to the United States for the reasons alleged in the complaint; and

WHEREAS, the Court, having reviewed the Complaint and the Government's Application for Warrant of Arrest in Rem, finds, the defendant property is currently in the possession, custody, or control of the United States; and

WHEREAS, Supplemental Rule G(3)(b)(i) provides that the clerk must issue a warrant to arrest the property if it is in the government's possession, custody, or control;

YOU ARE, THEREFORE, HEREBY COMMANDED to issue an arrest warrant in rem for the defendant property pursuant to Supplemental Rule G(3)(b)(i); and

YOU ARE FURTHER COMMANDED to deliver the arrest warrant in rem to a

person or organization authorized to execute it who may be a marshal or any other United States officer or employee, someone under contract with the United States, or someone specially appointed by the Court for that purpose, pursuant to Supplemental Rule G(3)(c)(i).

IT IS SO ORDERED,

IN THE UNITED STATES DISTRICT COURT
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UNITED STATES OF AMERICA	§	
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\$34,990.00 IN UNITED STATES	§	
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Defendant.	§	

APPLICATION FOR WARRANT OF ARREST IN REM

The United States of America, by its undersigned counsel, respectfully requests that the Clerk of this Court issue the attached warrant of arrest in rem pursuant to Rule G(3)(b)(i) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions. In support of its application, the United States shows as follows:

1. On March 1, 2019, the United States filed a complaint for civil forfeiture in rem in the above-referenced case seeking forfeiture of \$34,990.00 in United States currency (defendant property).
2. The defendant property is in the possession, custody, and control of the United States, to wit: United States Marshals Service, which obtained custody on October 10, 2018, pursuant to a probable cause search.
3. Supplemental Rule G(3)(b)(i) provides that if property is subject to forfeiture in a civil forfeiture case, and the property is in the Government's possession, custody, or control, the clerk "must issue a warrant to arrest the property."

Accordingly, the United States respectfully requests that the Clerk of the Court issue the attached warrant of arrest in rem.

Respectfully submitted,

JOSEPH D. BROWN
UNITED STATES ATTORNEY

/s/
MICHAEL W. LOCKHART
Assistant United States Attorney
Eastern District of Texas
Texas Bar No. 12472200
350 Magnolia Avenue, Suite 150
Beaumont, Texas 77701-2237
(409) 839-2538
(409) 839-2643 (fax)
michael.lockhart@usdoj.gov

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WARRANT OF ARREST IN REM

TO: The United States Marshal for the Eastern District of Texas and/or any other United States officer or employee, someone under contract with the United States, or someone specially appointed by the court.

On March 1, 2019, the United States filed a verified complaint for civil forfeiture in the United States District Court for the Eastern District of Texas against \$34,990.00 in United States currency (defendant property) alleging that the property is subject to seizure and forfeiture to the United States for the reasons alleged in the complaint.

The defendant property is currently in the possession, custody, or control of the United States.

In these circumstances, Supplemental Rule G(3)(b)(i) directs the Clerk of the Court to issue an arrest warrant in rem for the defendant property.

Supplemental Rule G(3)(c)(i) provides that the warrant of arrest in rem must be delivered to a person or organization authorized to execute it who may be a marshal or any other United States officer or employee, someone under contract with the United States, or someone specially appointed by the court for that purpose.

YOU ARE COMMANDED to do the following:

1. To arrest the defendant property as soon as practicable [see Rule G(3)(c)(ii) for exceptions for serving as soon as practicable] by serving a copy of this warrant on the custodian in whose possession, custody or control the property is presently found, and to use whatever means may be appropriate to protect and maintain it in your custody until further order of this Court.
2. Promptly after execution of this process, to file the same in this Court with your return thereon, identifying the individual(s) upon whom copies were served and the manner employed.

Dated:

DAVID O'TOOLE
Clerk of the Court
United States District Court for the
Eastern District of Texas

By: _____
Deputy Clerk

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Michael W. Lockhart, USAO, 350 Magnolia Ave, Suite 150
Beaumont, Texas 77701 (409) 839-2538

DEFENDANTS

\$34,990.00 in U.S. currency

County of Residence of First Listed Defendant Orange
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated <i>or</i> Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated <i>and</i> Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input checked="" type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify) _____
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

This is an in rem civil forfeiture proceeding pursuant to 21 USC 881

Brief description of cause:

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/01/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Michael W. Lockhart

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____